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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,788	01/11/2005	Ilan Halachmi	04435/LH	8480
1933	7590	09/27/2006	EXAMINER	
FRISHAUF, HOLTZ, GOODMAN & CHICK, PC			NGUYEN, SON T	
220 Fifth Avenue			ART UNIT	
16TH Floor			PAPER NUMBER	
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DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/500,788

Applicant(s)

HALACHMI ET AL.

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 and 20-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 20-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN  
PRIMARY EXAMINER

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-15,20-30** are rejected under 35 U.S.C. 103(a) as being unpatentable over Sissom et al. (5996529) in view of Birk (6363883) and Ensor et al. (6111508).

For claims 1-3,5,7-8,10-11,13,15, Sissom et al. teach a system for identifying a ruminant being milked, said system including: a transmitter being a transponder tag (800) attached to an ear of the ruminant and operable to transmit a predefined signal identifying the ruminant to which said transmitter is attached; and at least one teat cup (inherent in the teaching of Sissom since the invention deals with milking operation which has to include teat cups) positionable on a teat of the ruminant being milked and an antenna (603) affixed to the stall where the animal is to be milked, said antenna operable to receive the predefined signal and to provide the signal via a receiver device to a processor for interpreting the predefined signal thereby identifying the ruminant being milked. However, Sissom et al. are silent about the transmitter attached to a hind part of the ruminant, and the antenna affixed to the at least one teat cup.

Ensor et al. teach the same field of endeavor of animal identification comprising a transmitter that is attached to a hind part, such as a leg, of an animal by using a strap (col. 3, lines 13-17). It would have been obvious to one having ordinary skill in the art at

the time the invention was made to attach the transmitter of Sissom et al. on the hind part of an animal as taught by Ensor et al., depending on the user's preference to place the transmitter where it is most convenient and least obstruction to the animal.

Birk teaches that it known to mount devices such as camera (8) and light source (6) onto a robot arm which includes the teat cups for sending images back to the control unit or computer for identification of the animals. It would have been obvious to one having ordinary skill in the art at the time the invention was made to affix the antenna of Sissom et al. onto a robot arm which contains teat cups as taught by Birk or affix to the teat cups instead of onto the stall, since it has been held that rearranging or relocating parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

For claims 4 & 12, it is uncertain if the strap of Sissom et al. as modified by Ensor et al. & Birk (emphasis on Ensor) is elastic. One would tend to think so because the strap in Ensor is designed to wrap around a leg of an animal, thus, has to be elastic or adjustable to different animal leg size. In any event, even if not, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the strap of Sissom et al. as modified by Ensor et al. & Birk be elastic in order to allow adjustment according to the animal leg size.

For claims 6 & 14, Sissom et al. as modified by Ensor et al. & Birk are silent about the antenna has a range of 10 to 15 cm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the antenna of Sissom et al. as modified by Ensor et al. & Birk with a range of 10 to 15 cm, since it has been held that where routine testing and general experimental conditions are present,

discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claim 9, Sissom et al. as modified by Ensor et al. & Birk (emphasis on Sissom et al.) further teach a stationary interrogation unit comprising a transmitter and a receiver (col. 14, lines 1-13, col. 18, lines 14-17).

For claims 20-23,25-26 Sissom et al. teach a method for identifying a ruminant, said method including the steps of: attaching a means for collecting milk (inherent in the teaching of Sissom since the invention deals with milking operation which has to include teat cups) to a teat of a ruminant, the means for collecting milk having an antenna (603) affixed to the stall where the animal is to be milked; affixing a transmitter having a transponder (800) to a hind part of the ruminant, the transmitter transmitting a predefined signal identifying the ruminant; receiving the transmitted predefined signal by the antenna; and transferring the predefined signal via a receiver device to a processor which processes the signal and identifies the ruminant on which the means for collecting milk is attached. However, Sissom et al. are silent about the antenna affixed to the means for collecting milk, and the transmitter affixed to a hind part of the ruminant.

Ensor et al. teach the same field of endeavor of a method for animal identification comprising the step of affixing a transmitter that is attached to a hind part, such as a leg, of an animal by using a strap (col. 3, lines 13-17). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the step of affixing the transmitter of Sissom et al. to the hind part of an animal as taught by

Ensor et al., depending on the user's preference to place the transmitter where it is most convenient and least obstruction to the animal.

Birk teaches the same field of endeavor of a method for animal identification comprising the step of affixing a camera (8) and a light source (6) to teat cups to send signal (which is similar to what an antenna does) back to the computer for identification of the animal part. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the step of affixing the antenna of Sissom et al. to the teat cups as taught by Birk instead of to the stall, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

For claim 24, it is uncertain if the strap of Sissom et al. as modified by Ensor et al. & Birk (emphasis on Ensor) is elastic. One would tend to think so because the strap in Ensor is designed to wrap around a leg of an animal, thus, has to be elastic or adjustable to different animal leg size. In any event, even if not, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the strap of Sissom et al. as modified by Ensor et al. & Birk be elastic in order to allow adjustment according to the animal leg size.

For claims 26-29, Sissom et al. as modified by Ensor et al. & Birk are silent about the specific types of transponder such as a passive transponder, a full duplex transponder system, and a half duplex transponder system. It is notoriously well known in the electrical art that there are a variety of different types of transponder available. Therefore, it would have been obvious to one having ordinary skill in the art at the time

the invention was made to employ a specific type of transponder such as a passive transponder, a full duplex transponder system, and a half duplex transponder system in the system of Sissom et al. as modified by Ensor et al. & Birk, depending on the user's preference to pick which types of transponder best suited for the intended use.

For claim 30, it is believed that Sissom et al.'s transponder has to have some sort of a built-in battery in order to work. In any event, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a built-in battery transponder in the system of Sissom et al. as modified by Ensor et al. & Birk in order to provide portable power to the transponder.

### ***Response to Arguments***

3. Applicant's arguments filed 7/17/06 have been fully considered but they are not persuasive.

**Applicant argue that Ensor et al. do not teach attaching the identification device to a hind part as recited in claim 1. Instead, Ensor et al. teach attachment to the leg of an animal, which includes front legs as well as hind legs.**

The claim language indicates "hind part", which hind part can be interpreted as hind part relative to what element of the body? The head, neck, back, etc. Ensor et al. teach attachment to a leg of an animal and other parts such as a tail, which is definitely a hind part from all other parts such as head, neck, body, etc. In addition, the neck can have the ID device, thus, neck is hind part from the head. Furthermore, Ensor et al. teach "a leg", which does not exclude hind legs so it would be obvious to attach the ID on the hind leg depending on the user's preference to do so for best intended use.

**Applicant argued that initially, Applicant respectfully states that Birk is not in the same field of endeavor as Applicants' invention and the other cited references. Birk is not directed to animal identification, but is instead directed to an apparatus for automatically performing an animal-related operation. Birk is not at all directed to animal identification.**

Although Birk might teaches other things, nevertheless, Birk does teach some sort of identification method of recognizing an animal by it's teats or teats orientation (col. 2, lines 42-46). Applicant's claim language does not further detailed the specific of ID an animal, i.e. by number, temperature, lactation, etc. The claim language merely states "a system for identifying a ruminant being milked", which identification can be in many different ways. Birk's ID means happens to be identifying part of an animal such as the teats by color analysis (col. 2, lines 42-46). Therefore, Birk does teach in the same field of endeavor of animal identification.

**Applicant argued that contrary to the Examiner's assertion that the camera and light source are affixed to the teat cup of Birk, the light source (6) and camera (8) are clearly contained on the robot arm (4), and not on the teat cup (7).**

The Examiner has further explained in the above regarding affixing the antenna of Sissom et al. onto the teat cup and not the stall. In re Japikse, 86 USPQ 70 clearly demonstrates that a mere rearranging or relocating of parts of an invention involves only routine skill in the art, so it would be obvious to relocate the antenna of Sissom et al. from the stall to the teat cup. Birk is relied upon to demonstrate that equipments can be mounted on to a milking device such as a robot arm, which carries the teat cups. In a



way, affixing the camera to the robot arm also affixed it to the teat cups because the claim language does not state directly mounted on the teat cups. Parts can be affixed to each other through a medium and do not have to directly touch each other to be considered affixed. Therefore, Birk mounts his camera onto the robot arm and the robot arm includes teat cups, hence, indirectly, the camera is affixed to the teat cups through a medium, in this case, the robot arm.

**Applicant argued that moreover, the Examiner's indication that the teaching of a camera is similar to an antenna because the camera sends a signal back to the computer is not entirely accurate. The use of a camera is not equivalent to an antenna, because the camera does not receive information from a remote device, but instead performs its operation and sends a signal to the computer. In contrast, the antenna interacts with the transmitter and awaits receipt of the pre-defined signal from the transmitter and then provides a signal to the computer.**

It is not clear as to what Applicant means by "not entirely accurate"? So does this mean that there is some accuracy to the interpretation of a camera as such taught by Birk, is similar to an antenna since they both send signal back to a computer? Applicant should be aware of today's technology that there a plethora of wireless camera system with antenna therein to transmit signal. Even camera cell phone has this feature so it is nothing new in the art. Clearly from Birk's teaching that his system is a highly automated one, of which system of high automation is common in the art, therefore, it is unlikely that his camera is merely a regular camera because Birk's

intends his camera to send signal back to the computer for color analysis of the teats to ID the positions and all. Again, Applicant language is also broad because Applicant never defined that the antenna is not mounted inside any other device, so a camera such as that of Birk, must have some sort of internal antenna to send back images for color analysis to the computer.

**Applicant argued that the Examiner's rejection is based strictly on hindsight and there is no motivation to combine.**

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In addition, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir.

1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine the references is as stated above.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Son T. Nguyen  
Primary Examiner  
Art Unit 3643

stn